

The Fundamentals Of Minnesota Watershed Law

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*Minnesota Association of Watershed Districts Annual Meeting
New Managers Orientation*

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I. Introduction to Watershed Districts

Water knows no political boundaries. As public concern grows over flood protection and the decline in the water quality in our lakes and rivers, one comprehensive approach to water resources management lies with an idea adopted by the Minnesota Legislature over four decades ago: watershed districts.

The State of Minnesota has been a pioneer in the concept of watershed-based water management, adopting the Minnesota Watershed District Act in 1955. The Minnesota Watershed District Act, now codified in Minnesota Statutes Chapter 103D, provides for the establishment of watershed districts "to conserve the natural resources of the state by land use planning, flood control, and other conservation projects . . . using sound scientific principles for the protection of the public health and welfare and provident use of the natural resources." The Minnesota Watershed District Act recognizes several fundamental concepts in the effective management of water resources:

A. Hydrologic Focus. The law recognizes that water does not adhere to political boundaries and, thus, allows for the establishment of watershed districts as local government units bounded by hydrologic divides as opposed to political borders. As a result, lakes and streams, and the land draining into them, are regulated by one local entity with a central comprehensive vision for managing the entire water resource.

B. Land Use. The law recognizes that regulation of land use within a watershed is an essential component in protecting and preserving the water resources within the watershed. Watershed districts supplement municipal land use regulation with an exclusive focus on water quality and flood control in a manner designed to avoid the problem of pushing the detrimental effects of development downstream.

C. Financing Water Resources Improvements. Watershed districts provide a more workable and rational means of financing improvements for water resources. Typically, local municipal jurisdictions lack the necessary resources to fund critical improvements designed to restore water quality or provide flood control for local lakes and streams. Assessing the costs across the entire watershed that contributes drainage to these lakes and streams provides a more equitable and effective approach.

D. Engaging Citizen Ownership. Watershed districts, as local entities with boards comprised of local citizens, provide an effective means of engaging citizen ownership and management of valued local water resources. As one writer observed

recently in the National Geographic, the "watershed approach" is now the national model and new hope for effective management of water resources:

The intimacy of the smallest watersheds may be a key to their restoration: At that level every individual can have an effect. "It's almost impossible to address water quality on the main stem of a river," says James Fisher of the National Watershed Coalition. *"If you do it one small watershed at a time, you still have public support. Small size is the advantage. This replaces Big Brother with Joe down the creek."*

Michael Parfit, "Restoration: New Ideas, New Understanding, New Hope," Water: The Power, Promise and Turmoil of North America's Fresh Water. National Geographic Special Edition at pp. 113-114 (November 1993).

For decades, Minnesota has utilized the watershed approach, mobilizing citizen boards of managers who are intimately familiar with local land use issues to protect and restore our water resources.

II. Purposes and Powers of Watershed Districts

A. Purposes

Pursuant to Minnesota Statute § 103D.201, a watershed district may be established for any of the following purposes:

1. To control or alleviate damage from flood waters;
2. To improve stream channels for drainage, navigation, and any other public purpose;
3. To reclaim or fill wet and overflowed land;
4. To provide a water supply for irrigation;
5. To regulate the flow of streams and conserve the streams' water;
6. To divert or change all or part of watercourses;
7. To provide or conserve water supply for domestic, industrial, recreational, agricultural, or other public use;
8. To provide for sanitation and public health, and regulate the use of streams, ditches, or watercourses to dispose of waste;
9. To repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district;
10. To control or alleviate soil erosion and siltation of watercourses or water basins;
11. To regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use;
12. To provide for hydroelectric power generation;

13. To protect or enhance the water quality in watercourses in water basins; and

14. To provide for the protection of groundwater and regulate its use to preserve it for beneficial purposes.

B. Powers

As set forth in Minnesota Statutes § 103D.335, watershed districts have the following specific governmental powers:

- 1. General powers.** To the extent necessary for lawful conservation purposes:
 - a. to sue and be sued;
 - b. to incur debts, liabilities, and obligations;
 - c. to exercise the power of eminent domain;
 - d. to provide for assessments and to issue certificates, warrants, and bonds; and
 - e. to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out and exercise the powers expressly vested in it.
- 2. Joint powers.** To enter joint powers agreements;
- 3. Acquire and dispose of property from state and federal agencies;**
- 4. Data acquisition.** Make necessary or use reliable surveys and hydrologic data;
- 5. Cooperate or contract** with governmental or non-governmental agencies;
- 6. Perform ditch and watercourse work;**
- 7. Water control works.** Acquire, operate, construct and maintain water control works;
- 8. Water use and conservation.** Conserve and control the use of water within the watershed district;
- 9. Acquire property** by gift, purchase, taking under the procedures of Minn. Stat. Chapter 103D, or by the right of eminent domain, necessary real and personal property;
- 10. Enter Into Contracts.** Construction or implementation authorized by law;
- 11. Enter Lands** inside or outside the watershed district to make surveys and investigations to accomplish the purposes of the watershed district;

12. Sanitation and pollution prevention. Provide for sanitation and public health and regulate the use of streams, ditches, or watercourses to dispose of waste and prevent pollution;

13. Borrow Funds from government agencies or financial institutions;

14. Prepare floodplain maps of the lands of the watershed district located in the floodplain of lakes and watercourses;

15. Control land use and development in the floodplain, greenbelt, and open space areas of the watershed district in the absence of county or municipal ordinances regulating these matters;

16. State association membership. Appropriate necessary funds to provide for membership in a state association of watershed districts;

17. Enter into contracts with other governmental bodies for cooperation and assistance;

18. Projects in other states. Purchase lease or acquire land or other property in adjoining states for watershed purposes; and

19. Water resource management activities. Conduct studies and monitoring of water resources within the watershed and implement resource management programs.

20. Metropolitan watershed districts may also regulate the use and development of land under certain conditions relating to the status of local water planning by municipalities.

C. Rules

In addition to the specific watershed district powers listed above, the legislature also provided that the managers of a watershed district must adopt rules to accomplish the purposes of the watershed law and to implement the powers of the managers. Minn. Stat. § 103D.341.

III. Watershed Regulatory Activities

A. Promulgation of Rules.

Watershed districts are required to adopt rules to accomplish their purposes and to implement their powers. Minn. Stat. § 103D.341, subd. 1. Proposed rules must be adopted by a majority vote of the managers, after satisfying public notice and hearing requirements.

I. Notice and hearing requirements for adopting or amending rules:

a. BWSR

Prior to adoption, the proposed rule must be sent to BWSR for review. BWSR has 45 days to provide its comments in writing. Minn. Stat. § 103D.341, subd. 2(b). BWSR's comments are advisory only.

b. Public Hearing

Prior to adoption, the Managers must conduct a public hearing. The public hearing must be noticed in one or more legal newspapers published in the county and generally circulated in the watershed district.

2. Noticing and Filing Adopted Rules

The district must also file the new rules with the country recorder and mail a copy of the rules to the governing body of each municipality or city within its jurisdiction. Minn. Stat. § 103D.341, subd. 2(c) and (d); and Minn. Stat. §103D.341, subd. 3. Once approved, the new rule must be signed by the secretary of the board of managers, and recorded in the manager's official minute book. Minn. Stat. § 103D.341, subd. 2(a). Finally, the watershed district must publish a notice stating that it has adopted rules. The notice must be published in on or more legal newspapers published and generally circulated in the watershed district.

B. Permits

Watershed districts have authority to require permits for the use and development of land in the floodplain, greenbelt, and open space areas. Minn.Stat. § 103D.345. Watershed districts also require permits for other activities affecting water resources pursuant to the authority to adopt rules to implement the purposes of the watershed law. Minn. Stat. § 103D.341, subd. 1.

1. Benefits of establishing process

In order to provide applicants with notice of specific procedural requirements for getting a permit, watershed districts should establish a process to which all applicants are subject. While not required by law, the existence of such procedural guidelines helps watershed districts defend themselves against allegations that their decisions are arbitrary or capricious. Helpful procedural guidelines include:

- a. Establishing deadlines for having a permit application heard;
- b. Establishing minimum documentation requirements.

2. Ability to charge fees

Watershed districts are specifically authorized to collect fees to defray the costs of processing permit applications.

a. Permit Fees

Watershed districts may charge up to \$10 when a permit application is filed for use and/or development of land under its authority. Minn. Stat. § 103D.345, subd. 1.

b. Field Inspection Fees

Watershed districts may charge \$35 or more to cover the actual costs for a field inspection, which may include investigation of the area of proposed activity, analysis of the proposed activity, consultant services, and any subsequent monitoring required by the proposed activity. Minn. Stat. § 103D.345, subd. 2.

c. Processing fees under the Wetland Conservation Act

Watershed districts that are local government units implementing the Wetland Conservation Act may charge an applicant fees to cover the reasonable costs of implementing the provisions of WCA. The statute refers to these fees as "processing fees." Minn. Stat. § 103G.2242, Subd. 5.

3. Performance Bonds

Watershed districts may require an applicant to file a bond in an amount set by the managers, conditioned on the applicant's performance in compliance with the terms and conditions of the permit. Minn. Stat. § 103D.345, subd. 4.

C. Constitutional Considerations in Making Permitting Decisions

1. Due Process

All applicants and concerned persons should be given an opportunity to state their opinions, arguments, and all the support they might have for their case. Providing concerned citizens with such opportunities serves two practical purposes as well:

- a. Managers make better decisions when they listen to many different perspectives; and
- b. If a decision by the board of managers is appealed, proof that the managers listened to and considered all points of view is strong evidence that their decision is neither arbitrary nor capricious.

2. Equal Protection

Watershed districts must treat all applicants equally. Enacting procedural requirements, described above, will help ensure against equal protection problems. It is important to note that equal protection does not compel managers to make the same mistake twice. That is, just because watershed district "Q" mistakenly gave Billy Bob a permit last year, doesn't mean he (or anyone else) is entitled to get one based on the same grounds this year.

3. Takings

The Fifth Amendment to the U.S. Constitution provides that the government may not take property without just compensation. This language has been interpreted by the Supreme Court as requiring government agencies to compensate landowners in two situations:

(1) When the government takes actual possession through its power of eminent domain; and

(2) When government regulation precludes all economic uses of the land, making it virtually worthless.

D. Wetland Conservation Act

The Wetlands Conservation Act (WCA) was passed in 1991 and provides that wetlands must not be drained or filled unless replaced by restoring or creating wetlands of at least equal public value. Minn. Stat. Chapter 103G and Minn. R. Chapter 8420.

1. Determining the local government unit responsible for implementing WCA

The government entity with responsibility for implementing WCA within a certain area is referred to as the "local government unit" or "LGU." A watershed district may only serve as an LGU in the seven-county metropolitan area. Minn. Stat. § 103G.005, Subd. 10d; Minn. R. 8420.0110, Subp. 30. In the metro area, a watershed district will only serve as the LGU if a city or town has chosen not to be the LGU. Id.

2. Determining if the wetland is regulated under WCA

Not all wetlands are regulated under WCA. WCA does not govern "public water wetlands" regulated by the DNR. "Public water wetlands" governed by the DNR are all Types 3, 4 and 5 wetlands as defined in the United States Fish and Wildlife Service Circular 39 (1971 edition), that are 10 or more acres in size in unincorporated areas or 2 ½ or more acres in incorporated areas. Minn. Stat. § 103G.005, Subd. 15a (1997).

WCA does govern all other wetlands. Lands are defined as wetlands if they meet the wetlands criteria set forth in the 1987 U.S. Army Corps of Engineers Wetland Manual. *See* Minn. Stat. § 103G.005, Subd. 19.

3. Determining if the proposed activity is regulated under WCA

WCA regulates the "draining" and "filling" of wetlands. "Drain" is defined as "any method for removing or diverting waters from wetlands." Minn. R. 8420.0110, Subp. 15. This includes excavation of an open ditch, installation of subsurface drainage tile, filling, diking or pumping. Id. "Fill" is defined as "any solid material added to or redeposited in a wetland that would alter its cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a non-wetland." Minn. R. 8420.0110, Subp. 18.

There are also certain activities that are specifically exempt from regulation under WCA. Minn. Stat. § 103G.2241 (1997); Minn. R. 8420.0122. The exemptions include, among other things, a "de minimus" exemption and certain exemptions for agricultural activities. Id.

4. Determining if the activity may go forward and the replacement ratio

Under WCA, before an activity that will impact a wetland can go forward, the applicant must prove that the impact can not be avoided and that the impact will be minimized. Minn. Stat. § 103G.222. This is often referred to as "sequencing." If an applicant establishes these two elements, then the activity may proceed with proper replacement.

Impacted wetlands must be replaced. The amount of acres that have to be replaced for each acre of impacted wetland is referred to as the "replacement ratio." The replacement ratios are:

- a. for an impacted wetland located on nonagricultural land and for an impacted wetland located in an area where less than 80% of the presettlement wetlands exist, the replacement ratio is 2 acres of replaced wetland for each acre of drained or filled wetland (2:1 ratio);
- b. for an impacted wetland located on agricultural property or in an area where more than 80% of the presettlement wetlands remain, the replacement ratio is 1 acre of replaced wetland for each acre of drained or filled wetland (1:1).

5. Replacement Plan decisions

WCA provides extensive procedures, including notice and public comment procedures, for approval of a replacement plan. The statute and rules should be used to guide this process.

6. Regulation of Wetlands beyond the Wetlands Conservation Act

Watershed districts acting as local government units under WCA may require more procedures and wetland protection than provided under WCA but not less. Minn. R. 8420.0245.

Watershed districts that are not "local government units" under WCA may also regulate wetlands under their general rules authority under Minnesota Statutes §§ 103D.201 and 103D.341.

IV. Watershed Management Planning and Capital Improvements

A. Statewide - Minn. Stat. Chapter 103D

1. Watershed management planning

Watershed district plans outside the metro area must adopt a watershed management plan in conformity with the BWSR watershed management guidelines. The plan must include:

- (a) a narrative description of existing water and water-related problems within the district;
- (b) possible solutions to the problems;
- (c) and the general objectives of the watershed district.

2. Capital improvements

When a watershed district outside the metro area is constructing a project, whether operating alone or in conjunction with other government entities, the district must:

- (a) forward a copy of the project plan to the BWSR and its director, who must review the project and transmit written reports on the project to the managers;
- (b) provide notice of the time and place for a hearing on the proposed project;
- (c) conduct a project hearing;
- (d) establish the project upon a finding that the project will be conducive to public health, promote the general welfare, and is in compliance with the watershed management plan. The order formally establishing the project must include the findings of the managers.

B. Metro Area - Minn. Stat. Chapter 103B

Under Minn. Stat. Chapter 103B, metro area watershed districts are given additional powers. They may still act under Minn.Stat. § 103D should they so choose.

1. Watershed management planning-the "509 Plan." Minn. Stat. § 103B.231, subd.6.

- (1) The plan shall:
 - (a) describe the existing physical environment, land use, and development in the area and the environment, land use, and development proposed in existing local and metropolitan comprehensive plans;
 - (b) present information on, and potential problems with, the existing hydrologic system and its components;
 - (c) state management objectives and policies regarding water quality and protection of natural characteristics;
 - (d) set forth a management plan, including the hydrologic and water quality conditions that will be sought and significant opportunities for improvement;
 - (e) describe the effect of the plan on existing drainage systems;
 - (f) identify high priority areas for wetland preservation, enhancement, restoration, and establishment and describe any conflicts with wetlands and land use in these areas;
 - (g) describe conflicts between the watershed plan and existing plans of local government units;

(h) set forth an implementation program consistent with the management plan, which includes a capital improvement program and standards and schedules for amending the comprehensive plans and official controls of local government units in the watershed to bring about conformance with the watershed plan; and

(2) The plan must also set out procedures and timelines for future amendments.

2. Capital improvements in the metro area. Minn.Stat 103B.251

(1) Metro watershed districts undertaking capital improvements may certify the costs of the capital improvement to the county or counties contained within the territory of the watershed district. A copy of the plan must be forwarded to the county board, who then pay their appropriate share as provided by statute.

(2) After notifying the appropriate county boards, the district must provide improvement hearing notices. Minn.Stat. § 103B.251, subd.3.

(a) Two notices, published in appropriate local legal newspapers, shall appear in successive weeks. The last notice shall appear no more than 30 days prior and no less than 10 days prior.

(b) The notices must state the time, place, and subject of the hearing, along with the estimated cost (including the allocation thereof) and the method of financing.

(c) Notices must also be provided by mail to the counties and each municipality located wholly or partly in the watershed district.

(3) At the time and place specified in the notices, the hearing must be held to hear all parties interested in the project. If, after hearing all parties, the managers find that the improvement will be conducive to public health, promotes the general welfare, and is otherwise in accordance with the law, it may approve the improvement, determine the costs, and apportion the costs.

V. General Government Legal Concerns

A. Open Meetings Law

The Open Meeting Law was designed to make government bodies and their decision-making processes open to public involvement. Minn. Stat. Ch. 13D. The law impacts almost all aspects of local government whenever transacting the public's business, and may create duties and liabilities for Managers.

1. What meetings are subject to the Open Meeting Law?

a. Definition

The Open Meeting Law applies to any gathering of a quorum or more members of a governing body, committee or subcommittee where members discuss, decide or receive information as a group about the official business of that body.

b. Application

1. "Backroom" discussions

In Thuma v. Kroschel, the mayor of Afton and two city council members examined a contract and discussed an issue then pending before the city in the anteroom of the chambers. Although the three only spoke for approximately eight minutes, the court found a violation of the Open Meeting Law, and imposed \$100 fines on each of them. 506 N.W.2d 14 (Minn. App. 1993).

2. Email

Email interchanges between a quorum of a governing body may be considered an unlawful "serial meeting," in which members violate the Open Meeting Law by using email to reach a decision outside of a public forum.

2. Which meetings must be open to the public and when may meetings be closed?

a. Meetings generally must be open

Watershed district meetings are required to be open to the public unless there is express statutory authority for closing the meeting. Minn. Stat. § 13D.01, subd. 1.

b. Meetings which may be closed

Watershed districts may close a meeting under certain narrow circumstances. Minn. Stat. § 13D.05. A closed meeting must be noticed, and the reasons for closing the meeting should be noted in the minutes and on the record. Even where a statute allows a meeting to be closed to discuss a specific topic, the meeting must be open in order to discuss any other items of business.

1. Attorney-client privilege

Watershed districts may invoke the attorney-client privilege to close a meeting, Minn. Stat. 13D.05, subd. 3 (b), but only when they are meeting to discuss litigation. Districts may not close meetings for discussions with their attorney when they are discussing issues other than litigation. A watershed district board of managers may not hold a closed "executive session" meeting with legal counsel unless there is a clear record establishing an absolute need for confidentiality and the session is closed solely for the purpose of discussing litigation strategy. Prior

Lake American v. Mader et. al. (C7-00-1909, May 2, 2002).

2. Employee inquiries, Minn. Stat. § 13D.05, subd. 3

(a) Performance evaluations

A watershed district may close a meeting to conduct a performance evaluation of an employee. The identity of the employee must be disclosed prior to conducting the evaluation, and the evaluation must be summarized at the district's next public meeting. The initial meeting must be open at the request of the employee.

(b) Investigations of charges or allegations

A watershed district must close a meeting for an initial investigation of a charge or allegation against an employee (note that the meeting must be open if the employee so requests). If the members conclude that discipline may be warranted, subsequent meetings must be open. Minn. Stat. Sec. 13D.05, Subd. 2.

3. Sale or Purchase of Property

A watershed district may close a meeting under the following circumstances:

(1) to determine the asking price for real or personal property to be sold by the watershed district;

(2) to review confidential or nonpublic appraisal data under section 13.44, subdivision 3; and

(3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Such closed meetings must be tape recorded; any decisions on sale or purchase made in a closed meeting are contingent upon a board decision at an open meeting. Minn. Stat. Sec. 13D.05, subd. 3 c.

3. What procedures must watershed districts observe in conducting a meeting?

a. Notice requirements

All meetings must be noticed, even those closed to the public (which must also include the legal grounds for closing the meeting, see above). The specific requirements vary depending on the type of meeting:

1) Regular meetings. Minn. Stat. §13D.04.

A schedule of regular meetings should be kept on file at the watershed district's main office. Regularly scheduled meetings

whose time or place is different from, or changes from, the normal stated time or place must be noticed as a special meeting.

Although the law does not require any public posting of regularly scheduled meetings, the courts have traditionally interpreted the Open Meeting Law as requiring that government bodies provide the public with maximum access to the political process. Toward this end, many watershed districts include their schedule of regular meetings in their rules and publish their schedule at the beginning of the year. Watershed districts might also avoid any potential problems by posting notice of regular meetings on their principle bulletin board or on the doors of their meeting place.

2) Special meetings. Minn. Stat. § 13D.04, subd. 2. In the case of a special meeting, written notice of the time, date, place, and purpose of the meeting shall be posted on the district's principle bulletin board or, if none exists, on the door of the usual meeting room. Such a posting must be "reasonably accessible to the public." Specifically, it may not be in an interior hallway at the watershed district's offices. See Rupp v. Mayasich, 533 N.W.2d 893 (Minn.App. 1995).

The district must also provide notice to each person who has requested to be notified in the case of a special meeting. Such individual notice may be provided by:

(a) mailing or otherwise delivering the notice at least three days prior to the meeting; and

(b) publishing in the district's official newspaper or in a qualified newspaper of general circulation within the district's area of authority at least three days prior to the meeting.

3) Emergency meetings. Minn. Stat. § 13D.04, subd. 3.

An emergency meeting is a meeting called because of circumstances that require the immediate consideration of the board of managers. When the district holds emergency meetings, it must make a good faith effort to provide all those news media requesting to be notified with the time, place, and purpose of the emergency meeting, by telephone or any other means used to contact managers themselves.

4) Recessed or continued meetings. Minn. Stat. § 13D.04, subd. 4.

If a meeting is recessed or continued to another session, the district need not provide the public with notice of the second meeting so long as the time and place for the second meeting is established prior to adjournment of the first meeting. As with regular meetings, though, the district may wish to post

notice of such a continuation anyway in the interest of complying with the spirit of the Open Meeting Law.

b. Contents of Notice

In general, all notices of meetings must include the time, place, and the subject or purpose for the meeting.

4. Information available at an open meeting.

At least one copy of any materials distributed or made available before or during a public meeting to members of the watershed district's board must also be made available in the meeting room for inspection by members of the public. Minn. Stat. §13D.01, subd. 6. (NOTE: See also related obligations under the Data Practices Act, below.)

B. Government Data Practices Act

1. Presume all information must be made available to the public.

All recorded information (paper, tapes, video, etc.) is covered by the Act. The Act establishes a presumption that all government data are public. Public data under the Act includes:

a. Any data not covered by the limited exceptions listed below is public data. Minn. Stat. § 13.01, *et seq.*

b. Information about employees of the watershed district must be made available to the public upon request, including name; actual gross salary; salary range; contract fees; actual gross pension; fringe benefits; added remuneration such as expense accounts; job title; job description; education and training background of the employee; their previous work experience; date of first and last days of employment; status of complaint or charge against the employee and whether or not it resulted in disciplinary action; the final disposition of any disciplinary action and supporting documentation; work location, a telephone number; honors and awards; payroll time sheets; and the city and county of residence. Minn. Stat. § 13.43, subd.2.

In addition, any settlement in excess of \$10,000 which a watershed district negotiates with an employee is public data. Minn. Stat. § 13.43, subd.2.

2. Exceptions to the public data presumption.

a. Data subject to an attorney-client privilege.

b. Data collected in anticipation of pending civil litigation under Minn. Stat. § 13.39.

c. Initial investigations of employees.

NOTE: These types of non-public information may become public if introduced at a public meeting or upon resolution of the lawsuit or investigation.

3. Procedures for providing public access to public data.

Watershed districts must establish procedures by which members of the public may gain access to public data within a reasonable time. The procedures should include (1) naming a person to be the "responsible authority" for data practices; (2) prescribing times for public access to data (generally the regular business hours of the district); and (3) the costs for such access.

a. The law allows no charges to be assessed to individuals for mere inspection of public data, regardless of how much time and expense the district incurs in attempting to satisfy their request.

b. If however, a person wishes a copy of the data, the district may charge "reasonable fees" for any additional labor on the part of district employees in pulling, compiling or sorting data prior to making the copies.

c. A member of the public may not be charged for the costs associated with separating public data from non-public data. See Demers v. City of Minneapolis, 458 N.W.2d 155 (Minn. App. 1990) and 468 N.W.2d 71 (Minn. 1991).

d. Computation of such reasonable fees may include:

(1) the cost of materials, including paper, used to provide the copies;

(2) the cost of labor required to make copies;

(3) any schedule of standard copying charges;

(4) any special costs associated with making copies from computers or microfilm;

(5) mailing costs. Minn. Stat. § 13.03; Minn. R. § 1205.0300, subp. 4

In determining what amount to charge for copies, districts should itemize all costs, excluding tax and overhead, keeping these computations on file in case a citizen challenges the amount of the fees. Note that the Commissioner who oversees Data Practices Act appeals has struck down fees as low as fifty cents per page where a city failed to provide a proper itemization of fees. Commissioner of the Department of Administration Opinion Letter #94-059.

C. Time Deadline for Agency Action

Section 15.99 of Minnesota Statutes establishes time deadlines for land use and zoning decisions, including watershed district permits. The essential provisions are:

1. The watershed district must approve or deny a permit within 60 days of receipt of a complete application. If it does not do so, the application is deemed approved, but failure to approve constitutes denial if reasons for denial stated on record. If denied, the applicant must receive a written statement of reasons adopted at the meeting or the next meeting, but before the time limit expires.

2. An application is deemed complete unless within 15 business days of receipt the watershed district notifies the applicant to the contrary and states what is missing. If the watershed district sends timely notice of incompleteness, the 60 days does not begin to run until the additional submittals are received.

3. At any time before the end of the 60-day period, the watershed district may notify the applicant in writing that it is extending the period by up to another 60 days. The watershed district may extend for any good faith reason it wishes. However, the notification must state the reason for the extension and its anticipated length.

4. No further extension is permitted unless the applicant agrees.

Note that some watershed district rules provide that the district will act on a permit application within 45 days. However, a failure to meet this deadline does not result in a finding that the permit is deemed approved. Therefore, although the time to act on an application under §15.99 deadline is longer, the consequences of failing to comply with that timeframe are more grave.